

4. **TERM AND TERMINATION**

- 4.1 **Effective Date.** This Agreement shall be effective as on the latter of the following dates: the date the Agreement has been signed by all parties and approved for legal sufficiency by the Oregon Department of Justice, the date that any necessary state plan amendment is effective, or the date set forth by CMS in the CMS Exemption Letter, attached hereto as Exhibit C, and incorporated by reference. The Agreement shall continue in force through (enter date), unless it is terminated sooner pursuant to the following.
- a) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty (30) day period following the delivery. Failure to cure shall give the non-breaching party the right to cancel this Agreement at the end of the thirty (30) day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.
 - b) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety (90) days prior written notice.
 - c) **Law Change.** Either party may terminate this Agreement if federal or state law or regulations or CMS waiver terms are modified, changed or interpreted in such a way that the reimbursement is no longer allowable. Notice of intent to terminate based on law change shall be given to the other party in writing ninety (90) days prior to termination, or such shorter time as may be required to avoid a violation of law.
- 4.2 **Accrued Obligations/Remedies.** Notwithstanding any non-renewal or termination of this Agreement, State Supplemental Rebates will still be due and payable from the Manufacturer under Section 3 for any Covered Product(s) for which Manufacturer's obligation to reimburse arose prior to the effective date of termination of this Agreement. The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.
- 4.3 **Periodic Review.** On at least an annual basis or as mutually agreed upon by Manufacturer and Agency, Manufacturer shall have the opportunity to decrease the Net Price of its Covered Product(s) to increase the likelihood of product(s) utilization or inclusion in the PDL. Any revisions to this Agreement shall be effected by written amendment executed by both parties.
- 4.4 **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties as authorized by CMS.

5 CONFIDENTIALITY AND RECORD KEEPING

- 5.1 **Confidentiality.** The parties agree that confidential information will not be released to any person or entity not a party to this Agreement. "Confidential information" includes Medicaid Recipient information, Medicaid Utilization Information, trade secret and proprietary information, and any other information subject to federal or state confidentiality or privacy laws. Confidential information will not be disclosed or used except as expressly authorized in this Agreement or as may be required by law or judicial order. Each party shall maintain the confidentiality of information under this Agreement throughout the term hereof and for a period of three (3) years thereafter. Notwithstanding the non-renewal or termination of this Agreement for any reason, these confidentiality provisions will remain in full force and effect.
- 5.2 **Record Keeping and Audit.** During the term of this Agreement and for a period of three (3) years thereafter, both parties to the Agreement shall maintain current and accurate accounts, files, and records relevant to this Agreement. At a party's written request, the other party shall make such information available for inspection by the requesting party's representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, up to once each year, all such relevant accounts and records of the other party to verify compliance with the terms of this Agreement. The Manufacturer will hold the Medicaid Utilization Information confidential. If the Manufacturer audits this information or receives further information on such data, that information shall also be held confidential by the Manufacturer and its designated auditor.
- 5.3 **Medicaid Recipient Information.** Agency, its agents, employees and contractors shall not provide to Manufacturer or its agents any individually identifiable health information or protected health information ("PHI") or any other information prohibited or regulated by laws or regulations governing confidentiality or privacy of medical or other information. Nothing in this Agreement shall be construed to make Manufacturer or its agents or subcontractors a "business associate" of the Agency, as that term is used in the HIPAA Privacy Rules, 45 CFR Parts 160 and 164.
- 5.4 **Trade Secret and Proprietary Information.** Except as otherwise may be required to be disclosed by law and in accordance with 42 USC 1396r-8(b)(3)(D), the parties agree that confidential information will not be used except in connection with this Agreement or as may be required by judicial order. The parties agree that any information provided to the State by the Manufacturer under this Agreement itself constitutes trade secrets or proprietary commercial and financial information, not subject to public disclosure. Agency will treat trade secret information as confidential consistent with the Uniform Trade Secrets Act, ORS 646.461 to 646.475.
- 5.5 **Agents.** If the services of a third party are used by either party to administer any portion of this Agreement, Sections 5.1 through 5.5 of this Agreement shall apply to the third party.
- 5.6 **Required Disclosures.** In the event that either party is required by law to disclose any provision of this Agreement or pricing information to any person or entity, such party shall provide written advance notice to the other party sufficiently in advance of the disclosure to allow the other party to seek a protective order or other relief.

6.0 MISCELLANEOUS

- 6.1 **Indemnification.** The parties do not contemplate any circumstances under which indemnification of the other party would arise. Nevertheless, should such circumstances arise, Manufacturer shall be responsible for and shall indemnify and hold Agency harmless from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Manufacturer in the performance of this Agreement.
- 6.2 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.
- 6.3 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.
- 6.4 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.
- 6.5 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.
- 6.6 **Governing Law.** This Agreement shall be construed in accordance with 42 USC 1396r-8 and other laws applicable to the administration of Title XIX of the Social Security Act. Manufacturer agrees to be bound by the laws of the United States of America and with the laws of the State of Oregon. This Agreement shall be governed by the laws of the State of Oregon. In the event of a lawsuit involving this Agreement, venue shall be proper only in Marion County, Oregon.
- 6.7 **Integration.** The parties declare that this Agreement, including attachments, schedules, and addenda, contains a total integration of all rights and obligations of the parties. There are no extrinsic conditions, collateral agreements or undertakings of any kind. In regarding this agreement as the full and final expression of the contract, it is the express intention of the parties that any and all prior or contemporaneous agreement, promises, negotiations or representations, either oral or written, relating to the subject matter and period of time governed by this Agreement which are not expressly set forth herein are to have no force, effect, or legal consequences of any kind.
- 6.8 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform

under this Agreement, (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, (c) alter or impose additional criteria for placement of a Covered Product on the PDL, or (d) have the effect of requiring the Net Price or State Supplemental Rebate or other terms applicable under this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Product(s) upon expiration of the sixty (60) day period, with immediate effect.

6.9

Compliance with Law. In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Agreement is found to be invalid or illegal by a court of law, or inconsistent with federal requirements, this Agreement will be construed in all respects as if any invalid, unenforceable, or inconsistent provision were eliminated, and without any effect on any other provision. The parties agree to negotiate replacement provisions, to afford the parties as much of the benefit of their original bargain as possible.

6.10 **Authority.** Agency and Manufacturer each represent a warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

6.11 **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

Manufacturer:
(Mailing Address)

Agency:

Attn: _____

6.12 **Independent Contractor.** Manufacturer and the agents and employees of Manufacturer in the performance of this Agreement, will act in an independent capacity, and not as officers, employees or agents of the State of Oregon.

6.13 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval by Agency, as evidenced by the CMS Exemption Letter, attached hereto as Exhibit C and incorporated by reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

Manufacturer:

Agency:

Name

Title: _____

Date: _____

Name

Title: _____

Date: _____

ATTACHMENT A

Covered Products

The Covered Product(s) to which this Supplemental Rebate Agreement shall apply are the following:

National Drug Code	Brand	Strength	Package Description

ATTACHMENT B

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula for each Covered Product.

1. The Net Price of the Covered Product means the amount(s) agreed upon by the parties to this Agreement in order to bring the final cost to the Agency below the price of the Benchmark Drug, less any CMS Basic Rebate or CMS CPI Rebate amounts. The Net Price shall be applied in determining the Supplemental Rebate Amount and will be a factor in the equation that is determinative of the Supplemental Rebate.

Net Price per unit per Covered Product(s):

National Drug Code	Brand	Unit	Net Price

2. Supplemental Rebate Amount is the amount(s) per unit of drug that the Manufacturer has agreed to reimburse Agency per unit of drug under this Agreement in order to achieve the Net Price. The formula for calculating the Supplemental Rebate Amount is as follows.

The Supplemental Rebate Amount per unit of Covered Product = (Ingredient Reimbursement amount) - (ⁱCMS Basic Rebate and CMS CPI Rebate) - (Net Price)

3. The Supplemental Rebate is the amount paid on a calendar quarter basis by Manufacturer to Agency for utilization under Agency's Medicaid program pursuant to this Agreement.

Supplemental Rebate per quarter = Supplemental Rebate Amount per unit x number of units of Covered Product for which Agency paid during the quarter that is eligible for reimbursement under this Agreement.

ⁱ Ingredient Reimbursement based on the Estimated Acquisition Cost (EAC) on the first day of a calendar quarter for the quarter in which the rebate applies;

CMS Basic Rebate and CMS CPI Rebate as calculated and provided to Agency by CMS on a calendar quarter for the quarter in which the rebate applies.

ATTACHMENT C

CMS Exemption Letter